IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4680 OF 2002

Nathu Shankar Shinde & ors. .. Petitioners

V/s

The Special Land Acquisition Officer and others .. Respondents

Ms.A.R.S. Baxi for the Petitioners.

Mrs.Bhende for Respondents Nos.1 to 6.

Mr.S.A. Sawant for Respondents Nos.7 to 9.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 2ND AUGUST 2005

P.C. :

1. Heard the learned counsel for the parties.

2. This writ petition filed way back on 20th July 2002 sought a direction against Respondent No.1 - Special Land Acquisition Officer, Pimpri-Chinchwad restraining him from disbursing the compensation amount under the Award dated 25th January 2001 to Respondents Nos.7 to 9. The case of the Petitioners is that amongst various parcels of land, which were acquired under this Award for road widening, there were 3 parcels bearing Nos.4805 (Part), 4806 (Part) and 4806/12 (Part). It is the case of the Petitioners that these 3 parcels were

part of original agricultural land bearing Gat No.208, Hissa No.1A/3. Reliance is placed on the 7/12 extract which is certified by the Talathi of Village Pimpri Waghere on 30th March 2002. It is submitted that the Petitioners are some of the descendants just as Respondents Nos.7 to 9 of the original land holders. The land having been acquired for road widening purpose, their share ought to be paid to them and, therefore, appropriate proceedings be directed under section 30 of the Land Acquisition Act, 1894.

3. Now, what is to be noted is that whereas this petition was filed on 20th July 2002, a reply has been filed by the Special Land Acquisition Officer affirmed on 18th November 2002 and it is stated in para 5 thereof that the compensation amount has been released by Respondent No.1 in favour of Respondents Nos.7 to 9 on 19th August 2002. Although this petition was filed on 20th July 2002 and it was moved for admission on 17th August 2002, only a notice was issued on that day without any interim order. The matter reached much later thereafter before another Division Bench on 21st April 2005 when it was noted that Respondents Nos.7 to 9 were still not served and therefore once again a fresh notice was directed. Mr.Sawant has appeared for these Respondents. A reply has already been filed on their

behalf.

4. Mr.Sawant, learned counsel for Respondents Nos.7 to 9, has pointed out that apart from filing the present petition, one of the Petitioners, i.e. Petitioner No.6 - Jairam Baburao Shinde, has filed a suit being Special Civil Suit No.631 of 2002 in the Court of Civil Judge, Senior Division at Pune. That suit has been filed almost at the same time when this writ petition was filed. The suit is filed on 21st August 2002. Prayer (a) of that suit is that the suit property be partitioned by metes and bounds and the Plaintiffs' share be ascertained by partition and the possession of the same be handed over to him. Prayer (e) of this suit is for a direction that the illegal city survey records and proceedings in respect of the suit land prepared in 1979 be ordered to be treated as cancelled and be corrected as per the 7/12 extract of the said suit land. An interim injunction was also prayed in that suit through prayer (d). The prayer sought an injunction against Defendants Nos.A1 to A3 from collecting the compensation amount from the Special Land Acquisition Officer.

5. Mr.Sawant points out that apart from making this prayer in the suit, an interim application was moved for

restraining this payment being made over and that application came to be rejected by an order passed on Exhibit-5 on 11th November 2003. The application was rejected on two grounds; firstly of course that the payment had already been made and secondly that no prima facie case was made out. This was on the basis of the reading of the city survey record which the Plaintiffs are of course challenging in the main suit.

6. Faced with these facts and situation, Ms.Baxi, learned counsel for the Petitioners - Plaintiffs submits that the Plaintiffs will amend the suit and add a substantive prayer (a-i) seeking a direction that if the land cannot be now partitioned and be made over to the Plaintiffs, the appropriate portion of the compensation collected by Defendants Nos.A1 to A3 be directed to be paid to the Plaintiffs. It will be open for her to make that application. She further submits that the Plaintiffs will also move an interim application that the proportion of amount with interest be directed to be deposited in the Trial Court. It will be open to the Plaintiffs to make necessary application for amendment and an interim application. The Trial Court will consider the amendment application as also the interim application when filed and, after giving opportunity to the Defendants, will decide both these applications.

7. Considering that the suit is pending since 2002, Ms.Baxi makes a request that when these applications are filed, the Trial court may decide them at the earliest. We expect the Trial Court to decide the applications expeditiously.

8. Petition stands disposed of with the above order.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)